

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re PAMELA H., a Person Coming Under the
Juvenile Court Law.

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

LACY W.,

Defendant and Appellant.

F063196

(Super. Ct. No. JJV064908E)

OPINION

APPEAL from orders of the Superior Court of Tulare County. Charlotte A. Wittig, Commissioner.

Seth F. Gorman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen Bales-Lange, County Counsel, John A. Rozum and Abel C. Martinez, Deputy County Counsel, for Plaintiff and Respondent.

-ooOoo-

Lacy W. (mother) appeals juvenile court exit orders terminating dependency jurisdiction pursuant to Welfare and Institutions Code section 362.4,¹ awarding sole legal and physical custody of her daughter Pamela to Pamela's father, John P., and granting mother once a week, two-hour, visits with Pamela, which visits could not be increased in length or frequency unless mother establishes independent housing and is consistent with her counseling appointments. The visitation order further states that if disputes arise regarding custody or visitation, the parties are required to contact Tulare County Family Court Services and participate in mediation before filing further proceedings.

Mother contends the exit orders must be reversed because the juvenile court: (1) did not have authority to award custody of Pamela to John because the court never found him to be Pamela's presumed father; and (2) improperly interfered with the family court's jurisdiction by imposing conditions for increasing visitation and limiting the parties' access to the family court. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother came to the attention of the Tulare County Health and Human Services Agency (Agency) in April 2010, when she tested positive for methamphetamine after being admitted to the hospital while pregnant with Pamela and gave birth to Pamela two days later. Mother had custody of her four other children, who ranged in age from five years to 18 months. While a voluntary family maintenance case was opened, mother did not comply with the services offered and by August 2010, she was homeless and unable to care for the children. The social worker took the children into protective custody after mother agreed to enter an inpatient drug treatment program.

The Agency filed a dependency petition alleging the children came within the provisions of section 300, subdivision (b), based on mother's failure or inability to supervise or protect the children and care for them due to her substance abuse, her use of

¹ All undesignated statutory references are to the Welfare and Institutions Code.

controlled substances during her pregnancy with Pamela, and her failure to provide the children with adequate food, clothing and shelter. The petition also alleged the children came within the provisions of section 300, subdivision (g) as the children's fathers did not support them.

The children have different fathers. Mother told the social worker that when her first child was born, she was married to Jonathan W., and while they were still married when Pamela was born, they did not live together. Mother identified Pamela's father as either Donald B. or John. Donald, however, denied being Pamela's father and requested a paternity test. Mother was not living with either Donald or John when Pamela was conceived or born.

At the August 23, 2010 detention hearing, the juvenile court questioned mother about paternity issues. As pertinent here, mother testified she believed Jonathan was the father of her first child. Mother and Jonathan were married when her first child was conceived or born, and the two were still legally married. They separated for the last time in 2004, the year her first child was born. Mother did not know how to locate Jonathan; the last time she knew his whereabouts, he was living in New Mexico.

After testifying about the fathers of the next three children, the court asked mother who she believed to be Pamela's father. Mother responded it was either "Donnie B[]" or John. No man's name was on Pamela's birth certificate and no man had acknowledged being Pamela's father. Neither of the alleged fathers had lived with Pamela; Donald had visited Pamela and John had seen her once, and Donald provided support by helping with clothing. Paternity testing had not been done and there were no child support orders. The juvenile court found both Donald and John to be alleged fathers, and authorized DNA testing if the men were willing to be tested, provided there were no other judgments in place. The court found any presumption that Jonathan was Pamela's father to be rebutted subject to his right to contest that finding.

The juvenile court ordered the children detained, but gave the social worker discretion to place Pamela with mother at her substance abuse treatment program, and ordered the other children placed together in foster care.² Pamela was placed with mother on September 3, 2010. The social worker referred both Donald and John for genetic testing after John requested a paternity test.

At the September 16, 2010 jurisdictional hearing, mother submitted on the social worker's report and some amendments were made to the petition. The juvenile court found the allegations of the amended petition true. On September 17, the social worker mailed JV-505 Statement of Parentage forms to Donald and John.

On September 21, the social worker spoke with Jonathan. He said he was still married to mother, but they had not been together for 12 years. He twice attempted to file for divorce, but the last time he was unable to serve mother because she moved. Jonathan wanted a divorce, but did not know how to proceed because he did not know mother's whereabouts. Jonathan denied being the father of any of the children. While mother told him he was Kimberly's father, Jonathan claimed a DNA test completed by the Kansas Department of Child Support Services showed he was not Kimberly's father. Jonathan was not aware of any other children mother had since Kimberly's birth.

At the October 1, 2010 disposition hearing, the court found the presumption based on Jonathan's marriage to mother that he was the father of any of the children rebutted. The juvenile court exercised its dependency jurisdiction over the children and, having adjudged them dependents, removed the four oldest children from mother's custody, placed Pamela with mother, and ordered family reunification and maintenance services for mother. Mother was advised of her appellate rights, but did not appeal.

² The other children are not the subjects of this appeal and therefore will be mentioned only when relevant.

The Paternity Determination

Paternity testing revealed that John is not excluded as Pamela's father, as the probability of paternity is 99.99 percent, while Donald was excluded from paternity. The Agency set a paternity hearing for November 2, 2010, at which John appeared. The juvenile court appointed counsel for John and found him to be Pamela's biological father. Based on the declaration regarding genetic testing as to Donald excluding him from paternity, the court specifically found that he was not the father. At the request of John's attorney, the court ordered that John receive supervised visitation.

The Section 387 Petition

On November 29, 2010, the Agency filed a section 387 supplemental petition seeking to remove Pamela from mother's custody. Mother had left the inpatient drug treatment program on November 19 and was living with Donald, who has an extensive criminal history of possession and use of controlled substances as well as corporal injury to a child. The Agency alleged mother's conduct placed Pamela at substantial risk of harm. Pamela was detained from mother and placed in a foster home. The social worker reported that Donald's criminal history included at least three separate arrests for corporal injury to a child and other incidents such as battery to a spouse and cruelty to an elder likely to produce great bodily injury. While mother was made aware of Donald's criminal history, she continued to live with him and stated she wanted to marry him in the near future.

At the November 30, 2010 detention hearing, the juvenile court corrected a statement in the Agency's report that John is Pamela's presumed father, stating that it had found him to be the biological father, not the presumed father. John requested placement of Pamela. The Agency had not discussed placement with John in its report because the records checks it was conducting to determine whether Pamela should be placed with him had not been completed. The juvenile court called John to testify about his criminal history and living situation. John testified he was convicted of petty theft with a prior

and sent to prison in 2007 after violating drug court. He had been discharged from parole for 13 months. John claimed his only other criminal history was a check fraud conviction when he was 19 or 20 years old and a DUI in 1990. John admitted he had used controlled substances; he began using methamphetamine when he was 19 and stopped when he went to prison in September 2007. He had been clean since then and had not used any controlled substance or alcohol since his release from prison in July 2009. John lived with his mother, his 45-year-old brother, and his 19- and 21-year-old nephews. John's brother and mother had never been convicted of a crime, but one of his nephews had just been released on probation for a DUI. John was attending school to be a substance abuse counselor.

No other evidence was presented on the issue of placement. County counsel stated the Agency would consider placing Pamela with John provided he drug test and complete a substance abuse evaluation. Mother's attorney did not offer any argument on the issue. John's attorney stated John agreed with the Agency's conditions and still requested placement. Pamela's attorney agreed with placement under the Agency's conditions. The court ordered Pamela detained from mother and ordered Pamela placed with the "non-custodial parent, John P[]" subject to conditions, which included he submit to random drug testing and a substance abuse evaluation. The court gave mother visitation and continued her previous case plan.

A combined jurisdiction and disposition hearing was held on January 6, 2011. In a report prepared for the hearing, the social worker stated that John had visited consistently with Pamela until she was placed with him on December 7, 2010. Before Pamela was moved to John's home, a social worker conducted a home assessment, gathered information on all adults in the home, and conducted local records checks. The social worker reported that John was continuing to establish a bond with Pamela and the two interacted positively. The Agency did not recommend placement of Pamela with mother, as mother continued to live with Donald and had not yet completed the services offered.

After John and mother submitted on jurisdiction, the court found the petition's allegations true. As to disposition, on which the parents submitted, the court removed Pamela from mother's custody, continued Pamela as a dependent, placed Pamela with John after finding he was a parent who requested custody and with whom Pamela was not residing at the time of the events or conditions arose that brought Pamela under the provisions of section 300, and ordered family reunification services for mother and family maintenance services for father. Mother and John were both advised of their appellate rights, but neither appealed.

Interim Review Hearing

An interim review hearing was held in March 2011. The Agency recommended Pamela remain a dependent and continue in family maintenance services with John, while mother continue to receive family reunification services. The social worker had visited John's home, where Pamela lived with John and her paternal grandmother (grandmother). Pamela had adjusted well to the home and appeared happy and comfortable with John and grandmother. John had been meeting Pamela's needs by attending doctor's appointments, and purchasing appropriate food and clothing. John had made substantial progress on his case plan components. In a separate family court case, John had obtained a temporary restraining order against mother, and they participated in a family court mediation session.

At the March 23, 2011 review hearing, the juvenile court explained to the parties that the family court did not have jurisdiction over Pamela, the juvenile court did, and any mediation agreement was invalid until the juvenile court terminates jurisdiction. The juvenile court left all its prior orders in place, with the exception of lifting the requirement that John drug test, and set a six-month review hearing for June 15, 2011.

Six-Month Review Hearing

In a report prepared for the six-month review hearing, the Agency recommended the court dismiss dependency jurisdiction over Pamela, and award sole physical and legal

custody to John. On March 17, John told the social worker he had begun working as a drug and alcohol counselor. He was excited about his position and his ability to provide financially for Pamela, who remained in his care. John continued to ensure Pamela was up-to-date on her medical appointments and immunizations. He continued to reside with the paternal grandmother, and the placement was a stable one for Pamela.

On April 2, mother completed the treatment portion of her inpatient drug treatment program. After leaving the program, she moved in with her stepmother, but within a week, she left and moved in with Donald and his mother. Mother told the social worker she would live there until she could locate a stable place of her own. Mother was advised that, given Donald's history, the return of the children would be delayed if she continued to live with Donald. On April 28, mother told the social worker she had begun working and planned to save money to secure a place for her and the children. Mother participated in supervised visits, which had been positive.

Mother was in compliance with her services with the exception of co-dependency counseling. While she began counseling on February 22, 2011 and attended consistently while she was in the inpatient treatment program, once she was released from the program she stopped attending. Her last reported attendance was on March 29, 2011. On May 5, the social worker told mother to contact the clinician that day to schedule an appointment, but as of May 23, mother had not arranged an appointment. Mother was participating in her after care program and complying with drug testing. Mother told the social worker that she was "okay" with Pamela living with John, as she believed he cared for Pamela and Pamela was in a good place. Mother felt John was a good father to Pamela. Mother had not secured a stable place to live and, until she did so, the social worker opined placement of Pamela with her remained detrimental.

John was willing to cooperate and communicate with mother regarding Pamela. The social worker commented that John had shown he was capable of caring and providing for Pamela. He had a supportive network of family and friends who were able

to assist him as needed. Pamela was comfortable in John's home and exhibited "expression[s] of joy" in the home, lighting up when John entered the room and expressing eagerness to be held by him. Based on this information, the social worker recommended dismissal of dependency, that John be awarded sole physical and legal custody of Pamela, and mother be given visits as decided between John and mother.

At the June 15, 2011 review hearing, mother's attorney asked that the matter be sent to mediation since mother and John were unable to agree on visitation or custody. Mother wanted to contest the recommendation of sole custody to father; she wanted joint physical custody. The juvenile court set the matter for a contested hearing and sent the parties to mediation.

The mediation, however, failed to settle the issues. The mediator reported that mother wanted joint legal and physical custody of Pamela, and to continue to have unsupervised visits with her. Mother denied having a boyfriend, but admitted living with "her friend." John wanted to maintain sole legal and physical custody; he also wanted mother's visits to be supervised because he did not trust mother's choices and was concerned about Pamela's safety, as he claimed mother was living with her boyfriend.

Mother testified at the July 7, 2011 contested review hearing that she was seeking joint physical custody of Pamela, as well as unsupervised visitation. While three unsupervised visits had been scheduled, she had received only one. The first visit was cancelled because either Pamela or John was sick. The third visit did not take place because John never showed up. Mother was concerned that John would not deliver Pamela for visits. While mother claimed her relationship with Donald had ended, she was still living at his mother's house. Mother claimed that Donald was not at the house from Friday to Monday, and that he was "[n]ot really" there the rest of the week. Mother wanted to move in with another lady, but was waiting for a background check to be completed. Donald gave mother a ride to the mediation.

John testified that the last visit did not take place because he went to Bakersfield, where his father lives, so his father could meet Pamela. The social worker approved the trip nearly a week before the scheduled visit. John denied that instead of going to Bakersfield that day, he drove by mother's residence. Mother, however, testified that she saw John and his girlfriend drive by her house once that day.

Mother's attorney argued that John was attempting to sabotage mother's unsupervised visitation, and asked that the court take that into consideration when making its custody and visitation orders. John's attorney denied that John was trying to sabotage visitation and argued that the court should give mother supervised visitation, as John was concerned about mother living with Donald. Pamela's attorney argued that before mother receives unsupervised visits of more than a few hours, she needed to obtain housing independent of Donald and reestablish her counseling sessions. County counsel concurred with Pamela's attorney.

The juvenile court adopted the findings and orders the Agency submitted with the following changes or corrections: (1) John has sole legal and physical custody of Pamela; (2) mother has weekly unsupervised visits of at least two hours, which are not to occur in the home of Donald or his mother, and at which Donald may not be present; and (3) mother's visits shall not be increased until mother has established independent housing and provided evidence she is consistent with her counseling appointments. The court made further orders regarding the time and place for visitation, and ordered that if any disputes arise regarding custody or visitation, the parties are to be referred to child custody recommending counseling prior to filing anything in superior court. The court terminated jurisdiction as to Pamela. In the written custody order, the court found that mother and John are Pamela's "parents," that John has sole legal and physical custody of Pamela, and set forth mother's visitation orders and mediation.

DISCUSSION

Mother does not challenge the juvenile court's decision to terminate jurisdiction. Instead, she challenges the custody and visitation orders the court made on termination of jurisdiction. Mother contends the juvenile court erred in awarding John sole legal and physical custody of the children because the juvenile court never found him to be Pamela's presumed father. Mother also claims the juvenile court exceeded its jurisdiction when it placed conditions on future modification of the visitation order and requiring mediation before any proceedings can be held in family court regarding custody or visitation.

Standards of Review

Section 362.4 provides in part that “[w]hen the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, . . . the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” This statute vests the juvenile court with broad discretionary authority to make custody and visitation orders when terminating dependency jurisdiction. (*In re Chantal S.* (1996) 13 Cal.4th 196, 203-204 (*Chantal S.*); *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31 (*Roger S.*)). Such orders are commonly referred to as “exit orders” and remain in effect until modified or terminated by the family law court. (*In re John W.* (1996) 41 Cal.App.4th 961, 970.)

When deciding custody and visitation in any dependency case, the juvenile court’s primary consideration must always be the best interests of the child. (*Chantal S.*, *supra*, 13 Cal.4th at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268 (*Nicholas H.*); *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712 (*Jennifer R.*)). The juvenile court is not restrained by “any preferences or presumptions” in fashioning “exit orders” pursuant to section 362.4, therefore no specific finding is required to restrict visitation. (*Jennifer R.*, *supra*, 14 Cal.App.4th at pp. 712-713; *Nicholas H.*, *supra*, 112 Cal.App.4th at p. 268.)

Instead, the court must be guided by the totality of the circumstances and issue orders that are in the child's best interests. (*Chantal S.*, *supra*, 13 Cal.4th at p. 201; *Roger S.*, *supra*, 4 Cal.App.4th at pp. 30-31.)

We review the juvenile court's custody and visitation orders for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*); *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) A court abuses its discretion when it exceeds the bounds of reason by making a decision that is arbitrary, capricious or patently absurd. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) Under the abuse of discretion standard, when two or more inferences reasonably can be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. (*Ibid.*)

The Custody Order

Mother contends the juvenile court erred in awarding John sole legal and physical custody of Pamela because it never found him to be Pamela's presumed father.³ Specifically, mother argues the juvenile court was required to, but did not, attempt to determine which of the three men identified at the outset of the dependency case as

³ As pertinent here, dependency law recognize three types of fathers: alleged, biological and presumed. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15 (*Zacharia D.*); see § 361.5.) A presumed father is a man who meets one or more statutorily specific criteria. (Fam. Code, § 7611.) A biological father is one whose paternity of the child has been established, but who has not established that he qualifies as the child's presumed father. (*Zacharia D.*, *supra*, 6 Cal.4th at p. 449, fn. 15.) An alleged father is a man who may be the father of the child but who has not established biological paternity or presumed father status. (*Ibid.*) A man's paternity status determines his rights with respect to custody, reunification services and visitation. Only a presumed father is considered a "parent" within the meaning of the dependency statutes. (*Zacharia D.*, *supra*, at p. 451.) As a parent, he is entitled to custody (absent a finding of detriment), appointed counsel and reunification services. (§§ 361.2, subd. (a); 317, subd. (a) & 361.5, subd. (a).) Reunification services may be provided to a biological father if the court determines the services will benefit the child. (§ 361.5, subd. (a).)

Pamela's possible fathers – Jonathan, Donald or John – was Pamela's presumed father, and it was doubtful that John qualified as Pamela's presumed father before the juvenile court placed Pamela with him in November 2010. She asserts it was improper to divest her of custody and give it to a man who was never found to be a presumed father.

Mother asks us to reverse the exit orders and direct the juvenile court to hold an evidentiary hearing to determine whether John, Donald or Jonathan is Pamela's presumed father.

Although mother frames her challenge as one to the juvenile court's decision to give John custody of Pamela when it issued the exit orders, she effectively is challenging the juvenile court's decision in November 2010 to place Pamela with John. By the time the juvenile court made that placement order, it had asked mother about Pamela's alleged fathers, authorized genetic testing that revealed John as Pamela's biological father, and, based on the genetic testing and statements by Donald and Jonathan, found that Jonathan is not Pamela's presumed father despite still being married to mother,⁴ Donald is not Pamela's father at all, and John is Pamela's biological father. In November 2010, the juvenile court placed Pamela with John when she was detained from mother. At the January 2011 disposition hearing, the court found that John was a parent with whom Pamela was not residing at the time the events arose that brought Pamela within the provision of section 300 and who requested custody, and ordered Pamela be placed with

⁴ Under Family Code section 7540, the child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage. That presumption does not apply here, as Jonathan did not reside with mother when Pamela was conceived or born. While there is a rebuttable presumption that a man is the natural father of a child born during his marriage to the mother (Fam. Code, § 7611, subd. (a)), the juvenile court found the presumption rebutted as Jonathan was not Pamela's biological father, had not lived with mother for many years, and did not even know of Pamela's existence.

John with family maintenance services.⁵ Mother did not appeal from either that order or the orders made at the October 2010 disposition hearing, at which the juvenile court found Jonathan not to be the presumed father of any of the children.

In dependency proceedings, all orders subsequent to the dispositional order are directly appealable. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 (*Meranda P.*)). Unappealed dispositional orders are final and binding. (*Ibid.*) Since mother did not appeal from the juvenile court's findings and orders issued at or before the January 2011 dispositional hearing, including findings that neither Donald nor Jonathan are Pamela's presumed father, and the order placing Pamela with father, she waived her right to appellate review of these findings. Accordingly, to the extent mother contends the court erred in originally placing Pamela with John without finding him to be a presumed father, or in failing to hold a paternity hearing involving Donald and Jonathan before finding them to not be Pamela's father, she cannot attack them. For this reason, her claim that the juvenile court erred in failing to determine which of the three men is Pamela's presumed father is not reviewable.

This leaves mother with the ability to challenge only those findings and orders made at the six-month review hearing. By that time, Pamela had been living with John for nearly eight months and John had been providing and caring for her. In making its

⁵ Section 361.2, subdivision (a) provides that when a dependency court orders removal of a child from the custody of a parent, the court shall place the child with the noncustodial parent unless placement with that parent would be detrimental to the child's safety, protection, or physical or emotional well-being. The statute evinces the Legislature's preference for placement with the nonoffending noncustodial parent. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.) If the dependency court places the child with that parent, it has three options: (1) order the parent to be the child's legal and physical custodian and terminate jurisdiction; (2) order the parent assume custody subject to juvenile court jurisdiction and require a home visit within three months; or (3) order the parent assume custody subject to juvenile court jurisdiction and services be provided to one or both parents. (§ 361.2, subd. (b).)

custody order, the juvenile court granted sole legal and physical custody to John. Mother contends the juvenile court had no power to award him custody because it had not found him to be Pamela's presumed father, citing *Zacharia D.*, *supra*, 6 Cal.4th at p. 451, which states that "only a presumed father is entitled to custody of his child." The case does not assist mother, however, because it does not address a juvenile court's authority to make custody determinations upon termination of dependency jurisdiction where a biological father has already been given custody of his child pursuant to a final and binding juvenile court order apparently made under section 361.2. Mother does not cite any authority that the juvenile court, in making the exit orders, did not have authority to determine the division of custody between the mother and a biological father who already had custody of his child.

Mother asserts the juvenile court failed in its continuing duty to inquire regarding Pamela's parentage. Since mother failed to appeal from the dispositional orders, her claim must be limited to the period between the January 2011 dispositional order and the July 2011 exit orders. At the outset of that period, the court already had ordered placement of Pamela with John as a noncustodial parent. After that order was made, no other man appeared seeking to establish himself as Pamela's presumed father and John did not ask the juvenile court to make further findings regarding his status as Pamela's father. Accordingly, the juvenile court did not have any further duty to determine parentage. (See, e.g., *In re O.S.* (2002) 102 Cal.App.4th 1402, 1410 ["To be declared a presumed father under Family Code section 7611, a man must ask the trier of fact to make such a determination and establish the existence of the foundational facts by a preponderance of the evidence."].) Mother cites no authority that the juvenile court was prevented from awarding sole legal and physical custody to a biological father who already had custody pursuant to section 361.2. Mother's argument that the juvenile court could not make the custody order it did is groundless.

The Visitation Order

Mother contends the juvenile court exceeded the scope of its jurisdiction when it placed conditions on her ability to increase the length or frequency of visitation, namely that she had to establish independent housing and provide evidence she was consistently attending counseling appointments. She also asserts the order requiring mediation of disputes regarding custody or visitation before filing further proceedings in family court impermissibly limited her ability to petition the family court.

In making custody and visitation orders on termination of dependency jurisdiction, the juvenile court may make collateral orders, such as counseling orders, that are reasonably related to the custody and visitation orders. (*Chantal S.*, *supra*, 13 Cal.4th at pp. 203-204.) Thus, a juvenile court may require a parent to attend counseling as a condition of visitation. (*Id.* at p. 204.) A juvenile court, however, may not attempt to preclude modification of a custody or visitation order by a family court after termination of dependency jurisdiction. (*John W.*, *supra*, 41 Cal.App.4th at p. 973.) Thus, in *John W.*, the appellate court concluded it was improper for a juvenile court to direct that its visitation order could not be modified for approximately 11 months, given the lesser standard applicable to an exit order and because the order was fundamentally inconsistent with the termination of jurisdiction. (*Id.* at pp. 969, 973.) The court in *John W.* explained that “[b]y precluding modification for over 11 months, the juvenile court was treading into jurisdictional territory properly reserved for the family law courts[,]” adding that the order was essentially “an extension of juvenile court jurisdiction into the future when all basis for its jurisdiction had been terminated.” (*Id.* at p. 973.)

We begin with the conditions the juvenile court imposed for increasing visitation, namely that mother obtain independent housing and show evidence of participation in counseling. Mother likens these conditions to the order in *John W.* that precluded modification of the visitation order for nearly a year, and argues these conditions improperly interfere with the family court’s jurisdiction. Although mother recognizes

that a juvenile court may issue collateral orders that are reasonably related to custody and visitation orders, she argues the conditions imposed here are not conditions on visitation, but instead constitute a restriction on the family court's exercise of its discretion.

We disagree for the simple reason that the family court has jurisdiction to modify the visitation order, including the conditions the juvenile court placed on mother's ability to increase visitation. As stated in section 302, subdivision (d), any custody or visitation order the juvenile court issues when it terminates its jurisdiction pursuant to section 362.4 is a final judgment, but it may be modified in a proceeding or action described in Family Code section 3021 if "the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child." Here, the juvenile court's order did not preclude the family court from modifying the visitation order. If mother wants to seek an increase in visitation, but believes circumstances have changed such that she no longer needs to participate in counseling or obtain independent housing, she can seek modification of the order in family court.

Mother also contends the mediation requirement impermissibly interfered with the family court's jurisdiction. Family Code section 3170 requires that all contested custody or visitation issues between the parties be set for mediation; the failure to do so bars a hearing on those matters. (*Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 643; *Hogoboom v. Superior Court* (1996) 51 Cal.App.4th 653, 670.) Every superior court is required to make a custody/visitation mediator available. (Fam. Code, § 3160.) Pursuant to Family Code section 3183, subdivision (a), when consistent with local court rules, the mediator may submit a recommendation to the court regarding custody or visitation. This process is referred to as "child custody recommending counseling" and the mediator is referred to as a "child custody recommending counselor." (Fam. Code, § 3183, subd. (a).) The Superior Court of Tulare County has adopted this process in rule 919 of the Superior Court of Tulare County, Local Rules, which provides that the parties in disputed

custody and visitation cases will be referred to Family Court Services for mediation, and a child custody recommending counselor will work with the parties to assist them in settling the issues by agreement.

The requirement the juvenile court set forth here in its visitation order, namely that “[i]f any disputes arise regarding custody or visitation, the parties are to contact Tulare County Family Court Services at [telephone number] and participate in Mediation prior to filing further proceedings,” fully complies with the statutory requirement that a custody or visitation dispute be mediated before a hearing is held. The juvenile court’s reference during the hearing to “child custody recommending counseling” refers to the local rule that sets forth the procedure for conducting the mediation required by statute. The juvenile court’s order did not divest the family court of jurisdiction, as the family court would have imposed the same mediation requirement.

DISPOSITION

The juvenile court’s orders are affirmed.

Gomes, J.

WE CONCUR:

Wiseman, Acting P.J.

Levy, J.